

## SENATE BILL NO. 446

INTRODUCED BY T. SCHMIDT

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE FORMATION AND OPERATION OF FAMILY COUNCILS IN LONG-TERM CARE FACILITIES; PROVIDING FINDINGS AND A PURPOSE; PROVIDING DEFINITIONS; PROVIDING PROHIBITIONS AND REQUIREMENTS CONCERNING FAMILY COUNCILS; REQUIRING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO ADOPT RULES; PROVIDING FOR ADMINISTRATIVE ENFORCEMENT AND INJUNCTIVE RELIEF; AND PROVIDING APPLICABILITY DATES."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**NEW SECTION. Section 1. Short title.** [Sections 1 through 6] may be cited as the "Montana Family Council Act".

**NEW SECTION. Section 2. Finding and purpose.** Family councils are formed for the purpose of advocating for the quality of care for, and dignity of, Montana nursing home residents. The purpose of [sections 1 through 6] is to enable the formation and maintenance of family councils in nursing homes in this state.

**NEW SECTION. Section 3. Definitions.** As used in [sections 1 through 6], the following definitions apply:

(1) "Department" means the department of public health and human services provided for in 2-15-2201.

(2) "Family council" or "council" means two or more family members, friends, or representatives of residents, or any combination of these individuals, who meet as provided in state and federal law and regulations to discuss and act upon the wishes, cares, and concerns of residents, their family members, and friends related to life in the facility.

(3) "Family council member" or "council member" means a family member, friend, or representative of a resident who has agreed to serve on, and has been accepted by, a family council.

(4) "Nursing home" or "facility" means a long-term care facility as defined in 50-5-101.

(5) "Resident" means an individual admitted to a nursing home.

**NEW SECTION. Section 4. Prohibitions and requirements regarding family councils.** (1) The staff

or management of a nursing home may not prohibit or interfere with the formation or operation of a family council at that nursing home.

(2) During the process of admitting a new resident to a nursing home, the staff of the facility shall inform the prospective resident, the resident's family member, and any other representative of the resident of:

(a) the existence of a family council at that facility, if one exists;

(b) the right to form a council at the facility, if a council does not already exist;

(c) the right to participate in meetings of the council;

(d) the time and place of meetings of the council; and

(e) the name and contact information of a council representative.

(3) A facility staff or management may not prohibit a family council from meeting at least once a month at the facility in a common meeting room of sufficient size to accommodate attendees in reasonable comfort.

(4) A facility staff or management may not prohibit a family council from accepting assistance from an organization or individual from outside the facility.

(5) A facility staff or management may not prohibit a family council member from meeting at the facility or elsewhere with a representative of a public or private office, agency, or individual from outside the facility.

(6) A facility staff and management shall provide a family council with adequate space on a bulletin board or other posting area in the facility to display family council meeting notices, minutes, newsletters, or other information pertaining to the formation or operation of the council.

(7) The facility staff or management may not prevent or interfere with the receipt by a family council, family council member, or family council representative of mail addressed to the council, a council member, or a representative at the facility. The staff of a facility shall deliver mail addressed to a council, council member, or resident representative to a council representative, the council member, or the representative unopened.

(8) A member of the administrative staff of a facility, a facility visitor, or other staff member of the facility may attend a meeting of the council upon verbal or written invitation from the council.

(9) The facility management shall designate a staff person who will assist, and the designated person shall assist, the council, if requested by the council, in responding on behalf of the facility management to a council request or concern communicated by the council to the facility staff or management.

(10) The facility staff and management shall consider the views and act upon the facility's family

council's grievances and recommendations concerning facility policies and operational decisions that affect the life and care of the facility's residents.

(11) The facility staff or management shall respond in writing as soon as possible to a written request or concern expressed by the facility's family council.

(12) A facility's management shall invite a family council representative to participate, on an ongoing basis, in the facility's performance improvement process.

(13) Facility staff or management shall invite a family council representative to attend exit interviews conducted as part of state and federal medicare and medicaid surveys.

(14) Facility activities concerning family councils must be conducted in accordance with applicable federal and state laws, rules, and regulations.

(15) A facility's staff and management may not willfully interfere with the formation, maintenance, promotion, or operation of a family council. Willful interference includes:

(a) discrimination or retaliation against an individual because of an action taken by a family council; and

(b) the scheduling of a facility event that conflicts with a previously scheduled meeting of a family council.

**NEW SECTION. Section 5. Department to adopt rules.** The department shall adopt rules to implement [sections 1 through 6].

**NEW SECTION. Section 6. Administrative enforcement -- injunctive relief.** (1) The department may, after an opportunity for a hearing pursuant to the contested case procedures of the Montana Administrative Procedure Act, order a nursing home to cease and desist from a violation of [section 4].

(2) The department may bring a civil action for injunctive relief against a nursing home that violates a cease and desist order issued by the department pursuant to this section. An action must be brought in the district court for the county in which the nursing home is located.

**NEW SECTION. Section 7. Codification instruction.** [Sections 1 through 6] are intended to be codified as an integral part of Title 50, chapter 5, and the provisions of Title 50, chapter 5, apply to [sections 1 through 6].

1        NEW SECTION. **Section 8. Retroactive applicability -- applicability.** [This act] applies retroactively,  
2        within the meaning of 1-2-109, to family councils formed before October 1, 2005, and also applies to family  
3        councils formed on or after October 1, 2005.

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